IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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CASE NO. **<u>COMPANY PETITIONS Nos.166 and 167 of 2015</u>**

<u>C.P.No.166 of 2015:</u>

M/s.Balaji Crop Care Private Limited, Hyderabad

…Petitioner /Transferor Company No.1

<u>C.P.No.167 of 2015:</u>

M/s.R.L.Agriox Private Limited, Hyderabad

…Petitioner /Transferor Company No.2

DATE OF JUDGMENT PRONOUNCED: 18.08.2015

<u>SUBMITTED FOR APPROVAL:</u>

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

<u>COMPANY PETITIONS Nos.166 and 167 of 2015</u>

18.08.2015

C.P.No.166 of 2015:

M/s.Balaji Crop Care Private Limited, Hyderabad

…Petitioner /Transferor Company No.1

C.P.No.167 of 2015:

M/s.R.L.Agriox Private Limited, Hyderabad

…Petitioner /Transferor Company No.2

Counsel for the petitioners: Mr.R.Raghunandan

for Sri T.Vinod Kumar

The Court made the following:

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COMMON ORDER:

Company Petition No.166 of 2015 is filed by M/s.Balaji Crop Care Private Limited, Hyderabad, (transferor company No.1) and Company Petition No.167 of 2015 is filed by M/s.R.L. Agriox Private Limited, Hyderabad, (transferor company No.2) under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') for sanction of the proposed scheme of amalgamation of transferor company Nos.1 and 2 with M/s.Sowbhagya Biotech Private Limited, Hyderabad (transferee company).

In C.P.No.166 of 2015 filed by transferor company No.1, it is pleaded that it was incorporated as a private limited company under the Act on 21.11.2005; that its registered office is situated at Plot No.79, Phase II, IDA, Cherlapally, Hyderabad 500 051; that its authorized share capital is Rs.2,40,00,000/- divided into 24,00,000 equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.1,50,00,000/- divided into 15,00,000 equity shares of Rs.10/- each; that its main objects are to carry on in India or elsewhere the business to produce, manufacture, process, grind, blend, convert, extract, prepare, store, preserve, pack, dehydrate, refine, trade, buy, sell or otherwise deal in all types of Agro & agricultural and to deal in various crop care products and other products such as chemical insecticides, Fungicides, weedicides, Plant Growth promoters & Regulators, Surfactants, Natural/Chemical/Specialty Fertilizers, Seeds, Micro Nutrients, Biological Extracts, Derivatives, Bio control Agents, Bio Pesticides, Veterinary Feed supplements, Fermentation Metabolites and various Agro Chemicals; and that its Board of Directors in their meeting held on 15.01.2015 resolved to approve the proposed scheme of amalgamation, *vide* Annexure-E in C.P.No.166 of 2015 to be operative from the appointed date i.e., 01.04.2014.

This Court, by common order, dated 21.04.2015, in Company Application Nos.747, 748 and 749 of 2015 dispensed with the requirement of holding the meetings of the equity shareholders and secured/unsecured creditors of the transferor company No.1. In C.P.No.166 of 2015, this Court, on 22.06.2015, ordered notice to the Official Liquidator and the Regional Director, Ministry of Corporate

Affairs, South Eastern Region, Hyderabad, and also ordered publication of notice in two daily news papers *viz*., ‘The Business Standards’ (English) and ‘Andhra Bhoomi’ (Telugu) of Hyderabad editions, having circulation in the State of Telangana. Accordingly, publication was carried on and proof thereof was filed through memo, dated 21.07.2015.

In C.P.No.167 of 2015 filed by transferor company No.2, it is pleaded that it was incorporated as a Private Limited Company under the Act on 08.06.2007; that its registered office is situated at Plot No.79, Phase II, IDA, Cherlapally, Hyderabad 500 051; that its authorized share capital is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.1,00,000/- divided into Rs.10,000 equity shares of Rs.10/- each; that its main objects are to carry on in India or elsewhere the business to produce, manufacture, process, grind, blend, convert, extract, prepare, store, preserve, pack, dehydrate, refine, trade, buy, sell or otherwise deal in all types of Agro & agricultural and to deal in various crop care products and other products such as chemical insecticides, Fungicides, weedicides, Plant Growth promoters & Regulators, Surfactants, Natural/Chemical/Specialty Fertilizers, Seeds, Micro Nutrients, Biological Extracts, Derivatives, Bio control Agents, Bio Pesticides, Veterinary Feed supplements, Fermentation Metabolites and various Agro Chemicals; and that its Board of Directors in their meeting held on 15.01.2015 resolved to approve the proposed scheme of amalgamation, *vide* Annexure-E in C.P.No.167 of 2015, to be operative from the appointed date i.e., 01.04.2014.

This Court, by common order, dated 21.04.2015, in Company Application Nos.750 and 751 of 2015 dispensed with the requirement of holding the meetings of the equity shareholders and trade/unsecured creditors of the transferor company No.2. In C.P.No.167 of 2015, this Court, on 22.06.2015, ordered notice to the

Official Liquidator and the Regional Director, Ministry of Corporate Affairs, South Eastern Region, Hyderabad, and also ordered publication of notice in two daily news papers *viz.*, 'The Business Standards' (English) and 'Andhra Bhoomi' (Telugu) of Hyderabad editions, having circulation in the State of Telangana. Accordingly, publication was carried on and proof thereof was filed through memo, dated 21.07.2015.

It is further averred that as per Clause 9 of part II of the proposed scheme of amalgamation, the petitioners are wholly owned subsidiary of the transferee company; that the entire share capital of the petitioners is held by the transferee company and its nominee and accordingly, there would be no issue of equity shares of the petitioners' shareholders and the entire shares held by the transferee company in petitioners shall stand cancelled on the scheme coming into effect.

As regards transferor company No.1, it has two shareholders i.e., the transferee company and its nominee, who have given their consent/no objection to the proposed scheme of amalgamation as noted in common order, dated 21.04.2015, in Company Application Nos.747, 748 and 749 of 2015. That it has one secured creditor i.e., State Bank of Hyderabad, from whom it has availed loan of Rs.2,54,86,978.69ps and that it has obtained consent/no objection letter, dated 30.03.2015, from the said secured creditor, *vide* Annexure-G in C.P.No.166 of 2015. That it has availed unsecured loan from Directors amounting to Rs.63,79,136/- and that it has obtained consent/no objection letter, dated 29.01.2015, from the creditor, *viz.*, R.L.Narayana Rao, *vide* Annexure-H in C.P.No.166 of 2015. That it has, in all, four trade creditors of the value of Rs.2,74,20,796/-, in respect of which, it has obtained certificate, dated 30.03.2015, issued by M/s.Chary and Co., Chartered Accountant, *vide* Annexure-I in C.P.No.166 of 2015; that out of the four trade creditors, M/s.Sowbhagya Biotech Private Limited (transferee company) is the major creditor, to whom it owes Rs.2,23,48,422/- and that it has obtained consent/no objection letters of the transferee company and also of the two other trade creditors, *viz*., M/s.Shiv Shakthi Bio-Technologies Limited, to which it owes a sum of Rs.9,28,342/- and M/s R.L.Agriox Private Limited (transferor Company No.2), to which it owes a sum of Rs.40,08,951/-, *vide* page Nos.179 to 180 in C.P.No.166 of 2015. Thus, except M/s.PCC Logistics Limited to whom transferor company No.1 owes Rs.1,35,082/-, all other trade creditors constituting overwhelming majority, both in terms of number and balance, have given their consent/no objection letters to the proposed scheme of amalgamation.

As regards transferor company No.2, it has also two shareholders i.e., the transferee company and its nominee, who have given their consent/no objection letters to the proposed scheme of amalgamation, as noted in common order, dated 21.04.2015, in Company Application Nos.750 and 751 of 2015. That it has trade credit of Rs.61,66,410/- as on 31.12.2014, in respect of which, it has filed certificate, dated 29.01.2015, issued by M/s.Chary and Co., Chartered Accountants, *vide* Annexure G in C.P.No.167 of 2015 and that it has obtained consent/no objection letter, dated 29.01.2015, from the trade creditor. It has no secured/unsecured creditors.

In response to the notice issued by the Court, the Regional Director filed a common report, dated 14.08.2015, in both these company petitions, wherein he has, *inter alia,* stated that in pursuance of the general circular No.1/2014, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, requiring comments/objections from the Income Tax Deportment, letter, dated 10.07.2015, was issued to the Income Tax Department for submitting their comments/objections, if any, and that no comments/objections of the Income Tax Department have been received. He has further stated that the petitioners are regular in filing the statutory returns and that no inspection/investigation involving the proposed scheme of amalgamation is pending against them.

In response to the notice issued by the Court, the Official Liquidator filed separate reports, dated 14.08.2015, in both these company petitions, wherein, he has, *inter alia,* stated that the affairs of the transferor company Nos.1 and 2 have not been conducted in a manner prejudicial to the interests of their members or to public interest.

As regards the reports of the Official Liquidator, the only objection raised is to the effect that the transferor company No.1 has failed to file consent/no objection letter of M/s.PCC Logistics limited, one of the four trade creditors.

Mr.R.Raghunandan, learned senior counsel representing Mr.T.Vinod Kumar, learned counsel for the petitioners, has drawn this Court's attention to the certificate, dated 30.03.2015, issued by M/s.Chary and Co., Chartered Accountants, *vide* Annexure-I in C.P.No.166 of 2015, wherein it is shown that transferor company No.1 has outstanding trade payables of Rs.2,74,20,796/- as on 31.12.2014 to four trade creditors. Learned senior counsel has explained that out of the four trade creditors, transferor company No.2), to whom transferor company No.1 owes Rs.40,08,951/-, M/s.Shiv Shakthi Bio Technologies Ltd., to whom transferor company No.1 owes Rs.9,28,342/- and transferee company, to whom transferor company No.1 owes Rs.2,23,48,422/- have given consent/no objection letters as noted above. He has accordingly, submitted that, out of the total balance due of trade creditors of Rs.2,74,20,796/-, transferor company No.1 has not obtained consent/no objection letter of only one trade creditor i.e., M/s.PCC Logistics Ltd., to whom transferor company No.1 owes Rs.1,35,082/-, which is negligible, and that therefore, the same is not material for considering the proposed scheme of amalgamation.

I find merit in the aforesaid submission. As rightly pointed out by the learned senior counsel, the balance of Rs.1,35,082/-, out of total balance of Rs.2,74,20,796/-, is abysmal and therefore, non-filing of the consent/no objection letter from such trade creditor has no effect and bearing on the proposed scheme of amalgamation.

Having regard to the reports of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator; the material produced by the petitioners; the consent/no objection affidavits/letters given by the shareholders, secured/unsecured/ trade creditors of the petitioners and as no claims or objections have been received in pursuance of publication of notice in newspapers, this Court is satisfied that the proposed scheme of amalgamation is in conformity with the provisions of the Act and that the same is not being opposed by stakeholders or general public.

Therefore, the proposed scheme of amalgamation is sanctioned with effect from the appointed date i.e., 01.04.2014. The petitioners are ordered to be dissolved without going through the process of winding up. The petitioners shall, within 30 days from the date of receipt of a copy of this order, cause a certified copy of the same to be delivered to the Registrar of Companies, Telangana and Andhra Pradesh, Hyderabad and take all other consequential actions in pursuance of the approval of the proposed scheme of amalgamation.

These Company Petitions are accordingly allowed.

(C.V.NAGARJUNA REDDY, J)

18th August, 2015

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